

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MICHAEL L WINSTON ,

Plaintiff,

-vs-

Case No. 15-CV-1398

**DAVID A CLARK,
KEONA GARTH-DICKENS,
BRANDON LAWLER,
NURSE CHRIS,
JANE DOE #1, Nurse,
JANE DOE #2, Nurse Practitioner,
JOHN DOES #1-10, C/O,**

Defendants.

DECISION AND ORDER

On November 23, 2015, Michael L Winston, filed a *pro se* complaint under 42 U.S.C. § 1983 alleging that his constitutional rights were violated at the Milwaukee County Jail. The plaintiff petitioned to proceed *in forma pauperis*, and the Court assessed an initial partial filing fee of \$0.09.

On December 7, 2015, the plaintiff filed a motion to waive the initial partial filing fee. The plaintiff then paid the initial partial filing fee in full on February 16, 2016. Therefore, the plaintiff's motion for leave to proceed *in forma pauperis* is granted, and his motion to waive the partial filing fee is denied as moot.

Regardless of fee status, the Prison Litigation Reform Act requires federal courts to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court may dismiss an action or portion thereof if the claims alleged are “frivolous or malicious,” fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

The plaintiff alleges significant Eight Amendment violations against individuals at the Milwaukee County Jail. He seeks monetary damages from Clark, Dickens, Jane Doe Nurse #1, Jane Doe Nurse Practitioner #2, Nurse Chris, Dr. Lothian, Lawler, and John Doe Correctional Officers #1-10. However, Dr. Lothian is not listed as a party in either the caption of the complaint or the “parties” section of the complaint. (ECF No. 1 at 1-2). “Selecting defendants is a task for the plaintiff, not the judge.” *Myles v. United States*, 416 F.3d 551, 553 (7th Cir. 2005). Therefore, it is “unacceptable for a court to add litigations on its own motion.” *Id.*

If the plaintiff seeks to allege claims against Dr. Lothian, he must file an amended complaint including the doctor as a party on or before **March 25, 2016**. If the plaintiff files an amended complaint, the Court will screen it pursuant to 28 U.S.C. § 1915A. If the plaintiff chooses not to

amend the complaint, the Court will issue a screening order based on the original complaint. The plaintiff is advised that the amended complaint must bear the docket number assigned to this case and must be labeled "Amended Complaint." The amended complaint supersedes the prior complaint and must be complete in itself without reference to the original complaint. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056-57 (7th Cir. 1998). The "prior pleading is in effect withdrawn as to all matters not restated in the amended pleading[.]" *Id.* at 1057 (citation omitted).

ORDER

IT IS THEREFORE ORDERED that the plaintiff's motion for leave to proceed *in forma pauperis* (ECF No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff's motion to waive the partial filing fee is **DENIED** as moot.

IT IS FURTHER ORDERED that on or before **March 25, 2016** the plaintiff may file an amended pleading curing the defects in the original complaint as described herein.

IT IS ALSO ORDERED that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from the plaintiff's prison trust account the \$349.91 balance of the filing fee by collecting

monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the clerk of the court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS ALSO ORDERED that copies of this order be sent to the warden of the Columbia Correctional Institution.

IT IS ALSO ORDERED that the plaintiff shall submit all correspondence and legal material to:

Office of the Clerk
United States District Court
Eastern District of Wisconsin
362 United States Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS. It will only delay the processing of the matter.

Dated at Milwaukee, Wisconsin, this 24th day of February, 2016.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge